Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Federal-State Joint Board on Universal Service	))	CC Docket No. 96-45
Request for Comments on Certain of the Commission's Rules Relating to High-cost Universal Service Support	)))	

REPLY COMMENTS OF THE MONTANA PUBLIC SERVICE COMMISSION

I. Overview

The Montana Public Service Commission (Montana PSC) submits these reply comments in response to the Federal-State Joint Board's (Joint Board) inquiry relating to high-cost Universal Service Support. The August 16, 2004 Public Notice references the issues the Federal Communications Commission (FCC) has referred to the Joint Board. In the main, the referral identifies three broad issue areas: 1) whether a universal support mechanism for rural carriers based upon forward-looking economic costs or upon embedded costs would most efficiently and effectively achieve the goals set forth in the Telecommunications Act of 1996 (Act); 2) the definition of rural telephone company for high cost areas and the consolidation of multiple study areas; 3) whether to amend or modify § 54.305 of the FCC's rules that concern the amount of universal service support for transferred exchanges. A December 14, 2004 deadline was set for reply comments.

The Montana PSC comments respond to certain of the initial comments filed on the three above noted issue areas. The Montana PSC thanks the FCC and the Joint Board for having initiated this important proceeding.

II. Specific Comments

A. Definition of Rural Telephone Company

This part of Joint Board's Public Notice inquires into various related issues. One aspect regards whether to combine -- consolidate -- areas for purposes of determining a carrier's status as a rural or non-rural carrier. The Montana PSC has no specific comments on this aspect, as Montana's carriers do not presently have multiple study areas.

B. Cost Basis for Support

The following Montana PSC comments relate to the use of cost modeling versus the use of embedded costs and the appropriate basis of high cost support for different technology based competitive eligible telecommunications carriers (CETC). The Montana PSC also comments on both the basis of support for eligible telecommunications carriers (ETCs) and the merit of cost averaging.

1. Forward Looking Economic versus Embedded Costs

As for the appropriate basis of high cost support there are generally two costing approaches that are most often cited. The two are embedded costs and forward looking economic costs (FLECs). Neither approach is without criticism. The Montana PSC agrees generally with those commenters who support the use of embedded costs for rural companies. The Montana PSC's agreement largely reflects the administrative cost imposition of using FLECs. Whereas relatively larger Montana rural carriers, such as Blackfoot Communications, Inc. (BCI), may have the financial capability to apply a FLEC model[1] it would be a mistake to then reason that such capability resides with all of Montana's small rural incumbent local exchange carriers (ILECs). Few, if any, of Montana's other small rural ILECs likely have the financial wherewithal to employ analysts directly or hire consultants to indirectly perform such complex studies in addition to their obligation to maintain historical embedded (accounting) cost information. Some of these small rural carriers may have study areas that only include a few wire centers. Rural carriers should have the option of using either an embedded or a FLEC basis for computing high cost support.

In rural areas of Montana, many consumers do not have access to make calls within their respective local calling areas absent the use of transport facilities. Rural and non-rural carriers alike incur network costs for functions such as transport that are not supported by Federal Universal Service Funds (FUSFs). Transport over an umbilical

[1] Blackfoot Telephone Co-op and Clark Fork Communications employed in their respective May 10, 2002 disaggregation filings the FCC's synthesis cost proxy model to identify relative costs.

facility or a fiber ring, while not loop plant per se, is as essential for access to the public switched telecommunications network (PSTN) as is any other link between any two customers within the same local calling area. If any such link in the connection is missing, then basic local service access is incomplete. Thus, regardless of the model chosen, embedded or FLEC, if services in rural areas are to be comparable to services in urban areas, then transport costs as we generally describe above should, along with other relevant network costs, be included in cost estimates for FUSF support.

2. Basis of Support: ILEC v CETC

The Montana PSC urges the Joint Board and the FCC to move quickly to a support mechanism that provides for the separate calculation of support for various telecommunications platforms. The identical support mechanism must cease. Wireless carriers should not, for example, receive support based upon the wireline carrier's costs, and vice versa. In this regard, the Montana PSC is in agreement with the preponderance of initial commenters (almost all agreed on this point).

Although some may believe that the wireline industry may eventually evolve into a wireless network industry the networks are not there yet, and, there are clear advantages, especially for broadband reasons, to be connected to wireline networks.[2] There emerges then an issue of whether CETCs should receive FUSFs based upon the ILEC's costs when such competitors only nibble away at and cream skim in and among an ILEC's service areas and when the ILEC's FUSF cost basis is premised, in the case of rural companies, on serving all customers on its network. One consequence of this allowance is, as OPASTCO comments, stranded costs for the ILEC. When competitive carriers seek ETC status they should receive support based upon their own costs and not the costs of the ILEC. An ILEC's costs are irrelevant as its costs are, in the case of a

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[2] This also figures into why although wireless service has grown rapidly only a very small percent of wireline subscribers appear to have totally abandoned their wireline services. Clearly, at present there is no contest in the race for speed: landlines can generally provide much greater speed than can wireless networks. All the Montana Commission received in the form of testimony from Western Wireless is that wireless technology is improving in this regard. However the actual availability of broadband is in Montana only a fraction of the available wireline broadband speeds.

non-rural carrier, averaged over an entire wire center, whereas a competitive carrier normally will only nibble at and serve a fraction – the low cost areas – of that wire center.

To further illustrate the need to eliminate the identical support rule we offer the following information. Western Wireless' CEO, John Stanton, in his presentation to this fall's Qwest Regional Oversight Committee (ROC) meeting of September 12 and 13, Missoula, Montana, presented estimates of relative wireline and wireless investment costs. Those costs are as follows: (1) national wireline carriers' cost is $2,492; (2) national wireless carriers' cost is $920; (3) rural wireline carriers' cost is $7,195; and (4) rural wireless carriers' cost is $1,734.[3] It is apparent from the presentation that to base support to wireless carriers upon the cost of the ILEC would bequeath an extraordinary subsidy to the wireless industry. As OPASTCO comments, and the Montana PSC agrees, the "identical support" rule must be eliminated.

Western Wireless is seeking federal universal service support through designation as a CETC in the jurisdiction of Montana's non-rural ILEC (Qwest). In its petition, PSC Docket No. D2003.1.14, Western Wireless seeks designation if it is able to serve only 85 percent of a wire center's population. Western Wireless' 85-percent commitment stands in contrast to its recent October 15, 2004, comments to the FCC on Reform of the Rural High-Cost Support System, wherein Western Wireless states (page 15) that CETCs must serve "all" consumers within designated service areas. Thus, before Western Wireless is willing and able to serve the entire non-rural ILEC's wire center population in Montana, Western Wireless will receive the ILEC's full universal service support amount per line for serving, assumably, the most profitable portions of each wire center. In contrast, the ILEC receives the same support, but serves all lines in the same wire center. This sort of outcome compounds the concerns over an ever rising federal high cost fund and is a sound basis upon which to discontinue the identical support rule.

If, however, the Joint Board and the FCC decline to pursue separate cost-based support mechanisms for different technology as suggested above, then the Montana PSC urges the Joint Board and the FCC to implement the OPASTCO, RICA, and RTG, Inc.,

[3] From CEO Stanton's presentation it remains unclear if these cost estimates are embedded or FLEC based. WW has recommended that CETCs receive support based on their own embedded costs.

safe harbor proposal submitted in their initial comments in this proceeding.[4] While the Montana PSC believes that basing support on a carrier's own cost is a better solution, the OPASTCO proposal also has merit. OPASTCO, et al., propose a tiered series of safe harbor ratios for determining a wireless CETC's per-line support as an alternative to a primary line restriction (see p. iv-vi). While the exact ratios may deserve further consideration, if a CETC disagrees with the percentage of the ILEC's federal support (e.g., 20 percent with Tier II), the CETC may, under the OPASTCO proposal, submit its own costs. When combined with the option -- safety valve -- that CETCs have to compute and provide their own costs, the safe harbor will provide an administratively efficient solution until such time as the FCC requires that all ETC support be based upon the ETC's own costs. The Montana PSC continues, however, to hold that the best measure of a wireless carrier's cost is its own cost of service, whether based upon embedded costs or FLECs.

To provide FUSFs to CETCs as an incentive to nibble at and serve only parts of an ILEC's network is to allow cream skimming. Another cream skimming problem arises with those who urge the Joint Board to base an ILEC's FUSFs on the provider of the lowest-cost technology. As the Alaska Telephone Association (ATA) comments in this proceeding, this converse view should not be adopted, as it is not sound public policy. To subject a wireline ILEC with carrier of last resort obligations to cream skimming based upon the competitive carrier's estimated costs, when it most likely will not serve all lines that the ILEC is obligated to serve, is truly bad public policy. For these reasons the Montana PSC also oppose Dobson Cellular System's and others' (e.g., Western Wireless's) recommendations to base support on the cost of the most efficient technology serving a given area.

In the same vein, the Montana PSC oppose General Communications, Inc.'s (GCI's), proposal to continue requiring that ILEC ETCs and CETCs receive the same per

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4 OPASTCO, RICA and RTG Inc. made their initial safe harbor proposal (CC Docket No. 96-45) on August 6, 2004. This NPRM is the FCC's response to the Federal-State Joint Board on Universal Service Recommended Decision regarding the process for designating eligible telecommunications carriers (ETCs) and the FCC's rules regarding high-cost universal service support [FCC 04J-1, CC No. 96-45, Released February 27, 2004].

line support amounts for substitute services. As the Montana PSC has already explained in opposition to the identical support rule, comments at this point will address the issue of the substitutability of wireless for wireline service. Evidence is emerging in Montana that runs contrary to the often held view that wireless is a substitute for wireline service. As Mid-Rivers Cellular testified in its recent Montana ETC designation docket (PSC Docket No. D2003.8.105), wireless service is not a substitute, but is instead a complement for the wireline carrier's service for which it will receive support if designated an ETC. Western Wireless filed evidence in another Montana docket (PSC Docket No. D2003.1.14) that supports the conclusion that wireless service is more of a complement than it is a substitute for basic exchange service. Although in a perfectly competitively market the GCI proposal may have some merit, the telecommunications markets in Montana do not satisfy this condition. GCI's recommendation, however, is unsound given the numerous disparities that exist and that will remain between wireless and wireline carriers even if wireline and wireless services were substitutes.

3. Cost Modeling

As for cost modeling, the Montana PSC urges the Joint Board to recommend that the FCC make improvements to and then validate its non-rural high cost support model. It should do so prior to applying any similar such model to rural carriers. Others have commented on the need to update inputs to the model, an exercise that should occur much more frequently.

As for model validation, the FCC should begin analyzing the ability of its FLEC model to replicate actual locations and costs for a representative sample of small rural exchanges or wire centers. The FCC should obtain actual geo-coded data for, for example, all relevant locations (residences, etc.,) for wire centers in rural areas and for at least several states that receive federal universal service high cost model funds. The validation exercise should also reflect the presence of actual roads and not modeled road locations. This data should be used to, in part, determine the accuracy of the assumptions required by use of the high-cost model and the resulting support estimates that derive from the high cost model. Ideally, this sort of sampling would be done for each company and in each state for which the high-cost model is used.

4. <u>Calculation of Support: Cost Averaging</u>

In its Public Notice the Joint Board also seeks comments on the degree of cost averaging that ought to occur. At present, a rural carrier's high cost loop support is an average for its study area within a state, unless there is disaggregation. For non-rural carriers high cost model support is disaggregated by wire center. If for either a rural or a non-rural carrier the relevant geographic area were a consolidated statewide area, the accuracy of costing would diminish as costs were averaged over larger areas.

In the case of a carrier or multiple carriers, whether rural or non-rural, the averaging of costs over larger and larger areas runs contrary to the goal of making implicit subsidies explicit. The idea of consolidating areas for the purpose of costing would run contrary to the goal of eliminating implicit subsidies. Such consolidation increases implicit subsidies as the averaging of costs in low and high cost areas dilutes and conceals the cost to serve high cost areas. In this regard, the Montana PSC supports the comments filed by ACS of Alaska, Inc., and Sprint Corporation. The Montana PSC also concurs with the comments of others who observe that a support mechanism that uses statewide average costs could violate the principle of sufficient and predictable support (see generally, initial comments of Telecom Consulting Associates (TCA) and the Rural Independent Competitive Alliance (RICA). Such averaging is contrary to the goals of Section 254 of the 1996 Act. In addition, as Sprint Corporation has commented (see also, initial comments of the Independent Telephone and Telecommunications Alliance (ITTA)) to consolidate carriers' study areas would also be "a giant step backwards" if by so doing the result dilutes the costs associated with high cost areas with the costs of lower cost areas.

III. Conclusion

The Montana PSC thanks the Joint Board and the FCC for this opportunity to comment on these complex and controversial issues. We remind that a central tenet of universal service is just that, ubiquitous service. The FCC and the Joint Board need desperately to resolve once and for all exactly what is meant by universal service. Is it all of the possible wire lines to homes and businesses, unless captured by a CETC, or is it all lines to homes and businesses, regardless of provider, and every additional line that is newly provided by a wireless technology provider to each and every individual using one or more wireless phones? If it is the latter, then the Montana PSC suspects that the federal universal service fund will raise ratepayer costs to a level that unnecessarily exceeds the level of affordability and will, in turn, jeopardize federal universal service programs. The Montana PSC comments are, in the main, directed at these two concerns: what is universal service meant to be; and will whatever definition that is implemented, either explicitly or implicitly, violate what is necessary to maintain affordable rates and quality services. The Joint Board and the FCC are at a critical juncture with this issue and the response to these important issues may decide the fate of federal universal service programs. If the FCC does not abolish the identical support mechanism, the high-cost model support will illogically and unnecessarily spiral ever upward and the support for universal service programs will face a death spiral.

Done this 14th day of December, 2004

MONTANA PUBLIC SERVICE COMMISSION

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